

Message

From: Gleason, Michael [Gleason.Michael@epa.gov]
Sent: 11/17/2020 12:10:05 AM
To: Thomas, Deb [thomas.debrah@epa.gov]; Schefski, Kenneth [Schefski.Kenneth@epa.gov]; Sutin, Elyana [Sutin.Elyana@epa.gov]
Subject: FW: Confirmation of our discussion earlier today
Attachments: Departing EPA for PAS and non career SES updated Nov 2020.docx

Hi Ethics Officials,

I attended Justina's post-employment counseling meeting with Greg today. FYI: I'm forwarding here the summary email she sent to him following the meeting.

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From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, November 16, 2020 5:04 PM
To: Sopkin, Gregory <sopkin.gregory@epa.gov>
Subject: Confirmation of our discussion earlier today

Hi there,

Thank you for your time today to review the post-employment restrictions and thank you for being an attentive ethics client! You had filed a Negotiations Notification Form with me, so you properly recused from participating as part of your official duties with your future employer, so we didn't need to discuss seeking or negotiating for employment. But since you're leaving EPA, we talked about the post-employment statute at 18 U.S.C. § 207 as well as the additional restrictions of Executive Order 13,770 (the Trump Ethics Pledge). The attached chatty guide reviews the rules, including what we know about the Foreign Agents Registration Act and the Lobbying Disclosure Act. You may also want to view the recent [Office of Government Ethics guidance LA-20-09](#), issued 10/29/20.

Here's a summary of our talk today:

- Permanent restriction at 18 U.S.C. § 207(a)(1) – you cannot represent the interests of another back to the United States (not just EPA) by making an appearance or communication with the intent to influence a federal official on any specific party matter that you worked on personally and substantially. This restriction lasts for your lifetime or the lifetime of the specific party matter, which is defined narrowly. It excludes matters of general applicability, like rulemaking, and focuses on those isolatable transactions that involve identified parties such as a grant, contract, permit, license, audit, investigation, enforcement action or lawsuit. I explained that this restriction is a representational bar only, which means that you can't be the "face" or the "voice" that comes back to the United States but that you could still be involved "behind the scenes." That said, I reminded you to please check your own bar rules regarding the duty of confidentiality for a former client (rule 1.9) and the Special Conflicts of Interest for Former Government Officers (rule 1.11);

- The two-year cooling off period at 18 U.S.C. § 207(a)(2) – you cannot represent the interests of another back to the United States (not just EPA) by making an appearance or communication with the intent to influence a federal official on any specific party matter that was pending in your area of responsibility (i.e., Region 8) during your last year of federal service. For this restriction, it does not matter whether you were even aware that it was pending in your region. All that matters is that it was actually pending in the Region. If so, then for two years, you can't represent the interests of someone else to the United States on that same specific party matter; and
- The one-year cooling off period at 18 U.S.C. § 207(c) – for one year, you cannot represent anyone to EPA on anything at all. This restriction is not limited to specific party matters, and includes even trying to get your client a meeting with the enforcement director at another region during your cooling off period. For one year, EPA is dead to you and you are dead to us (so to speak). You can still represent yourself by asking, say, an HR question and you can always ask an ethics official for help.

As an example, we discussed whether you would be able to ask a current EPA employee to serve on a panel that is being organized by your firm? The answer is no, not during the cooling off period. You may, however, tell someone else whom to call, and you may even serve on the panel with the EPA person. But you cannot be on any pre-panel planning calls because you are subject to that cooling off period. Now let's say that, after you leave EPA, you hear that KC Schefski has declined an invitation to speak at a conference. The panel organizers ask you to please convince him to speak anyway. You can't do that because you can't contact any EPA official on behalf of someone else on anything at all with the intent to influence us one way or another. You could, though, frame the most effective argument that you know will be persuasive and then rely on someone else to make that pitch. You can work "behind the scenes" and be the brains, but you can't be the face or the voice that represents someone back to EPA during your cooling off period.

One thing we talked about previously but I forgot to mention earlier today has to do with 18 U.S.C. § 203. Remember that your employer may not compensate you for any covered representational services that were provided at a time when you were a federal employee, and you can't accept that compensation. "Representational services" means communications to or appearances before federal entities (not just EPA) with the intent to influence the government on behalf of a third party. If you're signing on as an equity sharing partner, be sure that they keep you out of any distribution for services they rendered while you were at EPA.

I've assigned you a termination report in INTEGRITY that you need to submit no later than 30 days after you leave EPA. You can get to it under MY TASKS in your account at www.integrity.gov. I think it's easiest if you just do it while you're still here so you can use your PIV card. Let me know if you need any help. And if you ever have any post-employment questions, please contact me! We are always here at ethics@epa.gov to answer your questions!

Wishing you all the best in your future endeavors,
Justina

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